

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROMAN PEREZ NUNEZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:22-cv-01260-DAD-SAB (SS)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT, AND DENYING PLAINTIFF'S
SOCIAL SECURITY APPEAL

(Doc. Nos. 13, 14, 15, 16, 17)

Plaintiff Roman Perez Nunez, an individual proceeding *pro se* and *in forma pauperis*, brought this action seeking judicial review of the Commissioner of Social Security's final decision denying disability benefits pursuant to the Social Security Act. (Doc. No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

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1 On August 17, 2023, the assigned magistrate judge issued findings and recommendations
2 recommending that plaintiff's motion for summary judgment (Doc. Nos. 13, 14, 16)¹ be denied,
3 defendant's cross-motion for summary judgment (Doc. No. 15) be granted, plaintiff's appeal from
4 the decision of the Commissioner of Social Security be denied, and judgment be entered in favor
5 of defendant and against plaintiff. (Doc. No. 17 at 34.) The magistrate judge concluded that the
6 administrative law judge's conclusions were sufficiently supported by the record and by the
7 proper legal analysis. (*Id.* at 20–33.)

8 The pending findings and recommendations were served on the parties and contained
9 notice that any objections thereto were to be filed within twenty-one (21) days after service. (*Id.*
10 at 34.) Plaintiff filed his objections on September 1, 2023. (Doc. No. 18.) In his objections,
11 plaintiff argues that the administrative law judge improperly weighed the evidence of record.
12 (*Id.*) However, plaintiff's objections do not provide a basis for declining to adopt the pending
13 findings and recommendations.²

14 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
15 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's
16 objections, the court concludes that the findings and recommendations are supported by the
17 record and by proper analysis.

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19 ¹ Plaintiff's filings are not precisely named. The court construes Doc. No. 13 to be plaintiff's
20 motion for summary judgment and Doc. Nos. 14 and 16 to be plaintiff's briefing papers submitted
in support of his motion for summary judgment.

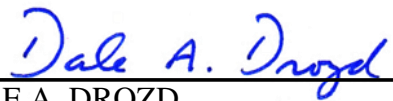
21 ² The undersigned appreciates the difficulties of applying for disability benefits without the
22 assistance of counsel. Some claimants may inadvertently overestimate their own abilities when
23 testifying or when speaking to doctors and this can make it more difficult for them to obtain
24 disability benefits. This is especially true for claimants with cognitive impairments. In this case
25 if plaintiff were to apply for disability benefits again he perhaps should consider obtaining
26 medical records from a doctor showing that he is unable to concentrate for very long or would
27 need frequent supervision in a work environment. The undersigned notes that the vocational
28 expert in this case suggested at the administrative hearing that if plaintiff "need[ed] to be
reminded to stay on task once per half-hour by a supervisor," then plaintiff would be disabled.
(Doc. No. 12-1 at 94.) The vocational expert also suggested that if plaintiff "need[ed] two 15-
minute breaks per day in addition to those breaks normally and regularly scheduled throughout
the day," then plaintiff would be disabled. (*Id.*) However, given the administrative record before
the court, plaintiff's appeal must be denied.

Accordingly:

1. The findings and recommendations issued on August 17, 2023 (Doc. No. 17) are adopted in full;
2. Plaintiff's motion for summary judgment (Doc. Nos. 13, 14, 16) is denied;
3. Defendant's cross-motion for summary judgment (Doc. No. 15) is granted;
4. Plaintiff's appeal from the decision of the Commissioner of Social Security is denied;
5. The Clerk of the Court is directed to enter judgment in favor of defendant Commissioner of Social Security and against plaintiff Roman Perez Nunez; and
6. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: April 12, 2024



DALE A. DROZD
UNITED STATES DISTRICT JUDGE